IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1032 OF 2003

Mohamod Ali Mohamod Habib Shaikh, R/o. G. Sector, A-1, Room No. 2, Chita Camp, Mumbai -88] ..Appellant (Ori. Accused)

versus

The State of Maharashtra (At the instance of Trombay Police Station C.R. No.1/1990 In its Sessions Case No.458/90] ..Respondents

Mr. A. Majeed Memon for the Appellant / Accused.

Mr. P. S. Hingorani, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
SMT. NISHITA MHATRE, JJ.

DATE : 5TH JUNE, 2007.

ORAL JUDGMENT : (Per : D. G. DESHPANDE, J.) :

1. Heard.

2. The appellant / accused has been convicted by the trial court for the offences under Sections 498-A and 302 of the IPC as well as under Sections 3 and 4 of the Dowry Prohibition Act and sentenced to suffer imprisonment including that of life

imprisonment and fine. By this appeal, the appellant / accused has challenged his conviction and sentence.

3. Prosecution case was that accused Mohamod Ali burnt his wife Parveen and killed her. His wife Parveen was married to him two years before the incident. They had a daughter of about one and half years of age. The initial period of marriage was happy but after six months accused started harassing her on the ground that her parents have not given her enough gold ornaments and cash. He was asking her to bring seven tolas of gold and cash from her mother and quarrelling with her and on her failure to do so she was tortured physically and mentally.

4. On 2.1.1990 the accused returned home from his work at about 11.00 p.m. He had a dinner. Thereafter he started quarrelling with wife Parveen. At about 23.15 hours he took out the kerosene can and poured kerosene on her body and lit her on fire. Parveen started screaming for help and came out running from house. The neighbours gathered and they put off the fire and she was removed to Rajawadi Hospital. Her statement was recorded in

the hospital and it was treated as FIR and in this background a case came to be filed against the accused for different offences, as stated above. The defence of the accused was that he was not present. He also examined two defence witnesses. His defence was totally disbelieved by the court and he came to be convicted and hence this appeal.

5. The question in this case is whether the conviction of the accused is proper. The most important evidence in support of the charges is the complaint Exhibit 9 recorded by the police officers and treated as dying declaration. This dying declaration was further corroborated by the dying declaration recorded by S.E.M. The learned APP pointed out that prosecution examined P.W. 1 Shalini Rasiklal Sikligar - the SEM to prove the dying declaration. She has stated that on 3.1.1990 she went to Rajawadi Hospital after receiving a phone call from Trombay Police. She went in Ward No. 10. It was a ladies burns ward. She was taken to the patient Parveen. She asked the relatives and the police officer to wait outside. A doctor was present and in presence of the doctor, she questioned Parveen and recorded her dying

declaration. She proved the dying declaration Exhibit 6. In the dying declaration Parveen told about the demands of gold by the accused, her inability to fulfil those demands and on the date of the incident accused pouring kerosene on her person from a can and setting her ablaze by a match stick and the people in the neighbourhood extinguishing the fire and calling the police.

6. The evidence of P.W.1 is corroborated by P.W. 2 Dr. Dherendra Dayaram Tripathi, who admitted Parveen on 2.1.1990 and recorded the history given by Parveen as homicidal burns by dousing in kerosene. He found that she had 83% burns. He also stated that he had given endorsement to the police on 3.1.1990 about the capability of the patient Parveen to give the statement. He proved that endorsement at Exhibit 9. This was given by him at about 1.15 a.m. on 3.1.1990. He also proved his endrosement on Exhibit 6, the dying declaration recorded by P.W. 1. He stated that the chances of survival were very slim because the injuries were very serious.

7. Both the witnesses P.W. 1 and P.W. 2 were

cross-examined by the defence. Nothing is brought out on record to create doubt about their testimony.

8. P.W. 3 Smt. Salma Yakub Khan is the sister of Parveen. She has stated that four months of the marriage were normal for Parveen. Thereafter accused started asking dowry and seven and half tolas of gold. Then she learnt that Parveen had got burns and was admitted in the hospital. She went there and spoke with Parveen. Parveen told her that accused poured kerosene on her and set her on fire for the sake of dowry and that Parveen died on 4.1.1990. There is nothing in the cross-examination at all to doubt the veracity of this witness. Witness was also recalled again for bringing certain documents but the purpose and object of which is nowhere declared and the document was marked for identification only.

9. The prosecution thereafter examined P.W. 4 Smt. Kulasumbi Shah Amarsh - the mother of Parveen. She also told about the same thing, viz. demand of seven tolas gold by the accused, the trouble given by the accused to Parveen. Then she learnt about Parveen being admitted in the Rajawadi Hospital.

She was in mourning in that time, she could not go to see her.

10. Next witness is P.W. 6 Jarinbee Munir Ahmad, the landlady of the house where accused and Parveen were staying. She has also stated that accused was demanding seven tolas of gold and Rs.30,000/- and she has scolded the accused for his demand and behaviour. On 2.1.1990 she was at home. She was sleeping after dinner. She heard sound. Her daughter and daughter in law rushed to see what had happened. Parveen was in flames. Witness heard **"Khala my husband burned me".** The witness was confronted with her statement regarding demand of gold but that was on the point of quantity only.

11. Then the prosecution examined panch witness P.W. 7 Khamas Ahmad Saror Khamas. He saw one kerosene can, one piece of cloth which was burnt which was a part of wearing apparel of a lady. There was smell of kerosene in the house. He had admitted his signature on the panchanama. It is Exhibit 16. He identified the clothes in the court. Then the prosecution examined P.W. 8 Dr. Baburao Damawale. He examined accused. There were injuries

to his hands i.e. the tips of fingers of right hand showing blisters with necrotic superficial skin. On puncturing the blisters serious fluid exuded from it, then the dorsum of fore finger and middle finger showed superficial burns with secondary infection in the form of yellowish slough little foul smell. Then medial aspect of left forearm showed multiple burn injuries. The age of the injuries was more than 36 hours. He proved medical certificate Exhibit 18 and C.A. report Exhibit 19. There was no cross-examination excepting one question about the age of the injuries. It is to be noted at this juncture, these injuries on the person of the accused according to the trial court negatived his defence that he was not present when Parveen was burnt. We do not find any fault in the reasonings and conclusions of the trial court in this regard.

12. Then prosecution examined P.W. 9 P.S.I. Kamble. He recorded the statement of Parveen and obtained her thumb impression. It is Exhibit 9. It was treated as FIR. In that statement Parveen had given history as stated above and the reason for burning her. When the statement was converted into FIR it was marked Exhibit 21. Then the accused was

arrested. The witness has also stated that SEM also recorded the statement of victim Parveen prior to his recording of her statement. All the muddemal was sent to the C.A. He denied the suggestion that no statement was given by Parveen or she did not make any allegations against husband.

13. This is the evidence of the prosecution. Two defence witnesses were examined by the accused to show that he was out of the house on the night duty, but those defence witnesses were disbelieved by the court because of the injuries suffered by the accused to his hand.

14. In his statement under Section 313, the accused did not give any explanation and contended that he was falsely implicated in the case.

15. It is in this background that the trial court convicted the accused. We do not find any lacuna in the prosecution case. All the important ingredients of the offence, viz. demand of dowry in the form of gold, harassment, torture and ultimately burning of Parveen, is proved by the prosecution by the evidence of the relatives of Parveen and also by

two dying declarations, one recorded by SEM and one recorded by PSI. No fault can be found with the approach of the trial court. The Judgment does not require any interference, nor is a case for doing so and therefore the following order:

ORDER

. Appeal is dismissed.

. The Conviction and sentence imposed upon the accused is maintained.

(SMT. NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)